

DENNIS J. HERRERA, State Bar #139669
City Attorney
ELIZABETH SALVESON, State Bar #83788
Chief Labor Team
MARGARET W. BAUMGARTNER, State Bar #151762
ADELMISE WARNER, State Bar #215385
Deputy City Attorneys
Fox Plaza
1390 Market Street, Floor No. 5
San Francisco, California 94102-5408
Telephone: (415) 554-3930
Facsimile: (415) 554-4248

Attorneys For Defendants
CITY AND COUNTY OF SAN FRANCISCO ET AL.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CLIFFORD COOK,

Plaintiff,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, ANTONIO FLORES,
DON SLOAN, MARSHA ASHE, and
DOES 1-50, inclusive,

Defendants.

Case No. C 07 2569 CRB

**NOTICE OF MOTION AND MOTION
TO DISMISS (FRCP 12(b)(6)), OR, IN
THE ALTERNATIVE, MOTION FOR
A MORE DEFINITE STATEMENT
(FRCP 12(e))**

Date: Oct. 26, 2007

Time: 10:00 a.m.

Place: Ctrm. 8, 19th Fl.

TO PLAINTIFF CLIFFORD COOK AND HIS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on October 26, 2007 at 10:00 a.m., defendants City and County of San Francisco, Marsha Ashe, Antonia Flores, and Don Sloan will move and hereby do move this Court, located at 450 Golden Gate Avenue, San Francisco, California, pursuant to Federal Rules of Civil Procedure Rule 12(b)(6) and 12(e) to dismiss plaintiff's Second and Third Causes of Action, to dismiss the individual plaintiffs, to strike the punitive damage allegations, or, in the alternative, for a more definite statement. The grounds for the motion are as follows:

1. Dismissal of the Second Cause of Action under 42 U.S.C. § 1983 for failure to state a claim;
2. Dismissal of the Second Cause of Action under 42 U.S.C. § 1983 based on qualified immunity of the individual defendants and failure to state a claim under *Monell*;
3. Dismissal of all the individual defendants for failure to state a claim under any theory of liability;
4. Striking of the punitive damages allegations because they are not available against the City;
5. Dismissal of the Third Cause of Action based on the court's exercise of discretion to decline supplemental jurisdiction of pendent state claims because the same cause of action by the same plaintiff is currently pending in state court.
6. Alternatively, for a more definite statement, on the grounds that the complaint fails to set forth sufficient factual allegations on which the City can determine the actual claims being made by the plaintiff, as required under *Bell Atlantic Corp. v. Twombly*, __U.S. __, 127 S. Ct. 1555; 167 L. Ed. 2d 929 (May 21, 2007).

1 This motion is based on the memorandum of points and authorities and declaration of
2 Margaret W. Baumgartner filed herewith, and all the pleadings and other documentation previously
3 filed in this case, and the argument of counsel at the hearing.
4

5 Dated: September 19, 2007

DENNIS J. HERRERA

6 City Attorney
7 ELIZABETH SALVESON
8 Chief Labor Attorney
9 MARGARET W. BAUMGARTNER
ADELMISE ROSEMÉ WARNER
Deputy City Attorneys

10 By: _____/s/_____
11 MARGARET W. BAUMGARTNER
12 Attorneys for Defendants CITY AND
13 COUNTY OF SAN FRANCISCO et al.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28